

EXHIBIT Q

Sentry's Skeleton Arguments in Support of
Applications for Permission to Serve out of the
Jurisdiction dated 8 April 2010 and 12 May 2010

**REDACTED - REFERENCE TO THE LIQUIDATION PROCEEDINGS OF
FAIRFIELD SENTRY LIMITED WHICH ARE SEALED BY ORDER OF THE COURT**

AND IN THE MATTER OF

FAIRFIELD SENTRY LIMITED (IN LIQUIDATION)

Applicant

and

ALFREDO MIGANI & OTHERS

Respondent

APPLICANTS' SKELETON ARGUMENT

(for hearing on 12 April 2010)

Introduction

**REDACTED - REFERENCE TO THE LIQUIDATION PROCEEDINGS OF
FAIRFIELD SENTRY LIMITED WHICH ARE SEALED BY ORDER OF THE
COURT**

**REDACTED - REFERENCE TO THE LIQUIDATION PROCEEDINGS OF
FAIRFIELD SENTRY LIMITED WHICH ARE SEALED BY ORDER OF THE
COURT**

3. There are two applications before the court:

- (1) For permission to serve a claim form out of the jurisdiction on various redeemers, the claim form having been issued against those redeemers on 13 October 2009 with the permission of the court given by order dated 9 October 2009. **This application is urgent as, unless leave is given, the Claim Form will expire on 13 April 2010** (CPR 8.12(1)). The bundle of documents relating to this application is the bundle with the “comb” spine. References to documents in that bundle are as follows: B1/tab/page.

**REDACTED - REFERENCE TO THE LIQUIDATION PROCEEDINGS OF
FAIRFIELD SENTRY LIMITED WHICH ARE SEALED BY ORDER OF THE
COURT**

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FAIRFIELD SENTRY LIMITED WHICH ARE SEALED BY ORDER OF THE
COURT**

Permission to serve out of the jurisdiction

11. The Claim Form was issued on 13 October 2009 (B1/5) pursuant to permission given on 12 October 2009 (B1/4). It is a claim by Sentry against Alfredo Migani and the other 22 Defendants whose particulars are set out in the schedule to the Claim Form (B1/5). The Statement of Claim was filed on 20 October 2009 (B1/6).
12. The validity of the Claim Form will expire on 13 April 2010 unless the validity period is extended pursuant to CPR 8.13 or permission is granted to serve out of the jurisdiction.
13. It is submitted that the better course is to serve the claim rather than seek an extension for which there are no compelling grounds and which would achieve nothing beyond delaying a decision which should be made now. Accordingly, the court is invited to make an order giving permission to serve out of the jurisdiction on the grounds set out in the following paragraphs.

Serious issue to be tried

14. It is submitted that there is a serious issue to be tried.
15. It remains to be seen whether the Defendants, or any of them, can make out a change of position defence.

16. Article 11(1) of Sentry's Articles of Association (**B1/3/ at page 17**) provides that:

"Any certificate as to the Net Asset Value per share or as to the ... redemption price therefore given in good faith by or on behalf of the Directors shall be binding on all parties."

17. The Articles of Sigma and Lambda contain identical provision as to the certification of net asset value.

18. So far as the Liquidators are aware, there was no certificate provided to redeemers (**B2/4, para 7**). Instead, redeemers were given a statement of account, which stated the redemption price (**B2/5**). It is at least arguable that the process apparently adopted did not result in the redemption price being binding on Sentry.

Rules permitting service out of the jurisdiction with the court's permission

19. The claims against the Defendants fall within the ambit of CPR 7.3(3)(b)(ii) for the following reasons:

- (1) Sentry was incorporated in the BVI.
- (2) Its Articles of Association are therefore a statutory contract governed by BVI law and binding on its members.
- (3) Each of the Defendants was a member of Sentry.
- (4) Each of the Defendants redeemed their shares pursuant to the mechanisms set out in Articles 9 to 11 of the Articles of Association.
- (5) The claim in restitution is made on the basis that a redemption price in excess of that due under the Articles was paid by mistake.
- (6) Prima facie the restitution claim is governed by the same law as governs the Articles (This is so despite the subscription agreements being subject to NYS law: the claims are not made on or in respect of those agreements: they contain agreements to submit to the jurisdiction of NYS in respect of other claims, but that is not a choice of law provision).

(7) A claim in restitution is a claim in quasi-contract and thus falls within CPR
7.3(3)(b)(ii).

**REDACTED - REFERENCE TO THE LIQUIDATION PROCEEDINGS OF
FAIRFIELD SENTRY LIMITED WHICH ARE SEALED BY ORDER OF THE
COURT**

MICHAEL GADD

8 April 2010

IN THE EASTERN CARIBBEAN
SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS
COMMERCIAL DIVISION
**REDACTED - REFERENCE TO THE
LIQUIDATION PROCEEDINGS OF
FAIRFIELD SENTRY LIMITED WHICH ARE
SEALED BY ORDER OF THE COURT**

AND IN THE MATTER OF

FAIRFIELD SENTRY LIMITED (IN
LIQUIDATION)

Applicant

and

ALFREDO MIGANI & OTHERS

Respondent

APPLICANTS' SKELETON ARGUMENT

**IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS
COMMERCIAL DIVISION**

**Claim Nos: BVIHC(COM) 405/2009
425/2009
005/2010
015/2010
030/2010**

Fairfield Sentry Limited (in liquidation)

Claimant/Applicant

and

Others

Defendants/Respondents

APPLICANTS' SKELETON ARGUMENT

(for hearing on 13 May 2010)

**REDACTED - REFERENCE TO THE LIQUIDATION PROCEEDINGS OF
FAIRFIELD SENTRY LIMITED WHICH ARE SEALED BY ORDER OF THE
COURT**

**REDACTED - REFERENCE TO THE LIQUIDATION PROCEEDINGS OF
FAIRFIELD SENTRY LIMITED WHICH ARE SEALED BY ORDER OF
THE COURT**

**REDACTED - REFERENCE TO THE LIQUIDATION PROCEEDINGS OF
FAIRFIELD SENTRY LIMITED WHICH ARE SEALED BY ORDER OF
THE COURT**

Permission to serve out of the jurisdiction

10. The validity of the Claim Forms will expire on the six month anniversaries of the filing of each Claim Form respectively unless the validity period is extended pursuant to CPR 8.13 or permission is granted to serve out of the jurisdiction.
11. It is submitted that the better course is to serve the claim rather than seek an extension for which there are no compelling grounds and which would achieve nothing beyond delaying a decision which should be made now. Accordingly, the court is invited to make an order giving permission to serve out of the jurisdiction on the grounds set out in the following paragraphs.

Serious issue to be tried

12. It is submitted that there is a serious issue to be tried.
13. It remains to be seen whether the Defendants, or any of them, can make out a change of position defence.

14. Article 11(1) of Sentry's Articles of Association [2/1-49] provides that:

"Any certificate as to the Net Asset Value per share or as to the ... redemption price therefore given in good faith by or on behalf of the Directors shall be binding on all parties."

15. So far as the Liquidators are aware, there was no certificate provided to redeemers. Instead, redeemers were given a statement of account, which stated the redemption price. It is at least arguable that the process apparently adopted did not result in the redemption price being binding on Sentry.

Rules permitting service out of the jurisdiction with the court's permission

16. The claims against the Defendants fall within the ambit of CPR 7.3(3)(b)(ii) for the following reasons:

- (1) Sentry was incorporated in the BVI.
- (2) Its Articles of Association are therefore a statutory contract governed by BVI law and binding on its members.
- (3) Each of the Defendants was a member of Sentry.
- (4) Each of the Defendants redeemed their shares pursuant to the mechanisms set out in Articles 9 to 11 of the Articles of Association.
- (5) The claim in restitution is made on the basis that a redemption price in excess of that due under the Articles was paid by mistake.
- (6) Prima facie the restitution claim is governed by the same law as governs the Articles (This is so despite the subscription agreements being subject to NYS law: the claims are not made on or in respect of those agreements: they contain agreements to submit to the jurisdiction of NYS in respect of other claims, but that is not a choice of law provision).

(7) A claim in restitution is a claim in quasi-contract and thus falls within CPR.

17. For the reasons set out above, the Applicants invite the Court to grant orders in the terms of the drafts at tabs 4, 6 8, 9 and 11.

DANIEL WALDEK

12 May 2010

**IN THE EASTERN CARIBBEAN
SUPREME COURT
IN THE HIGH COURT OF JUSTICE
VIRGIN ISLANDS
COMMERCIAL DIVISION**

**Claim Nos: BVIHC(COM) 405/2009
425/2009
005/2010
015/2010
030/2010**

**Fairfield Sentry Limited (in liquidation)
Claimant/Applicant
and**

**Others
Defendants/Respondents**

APPLICANTS' SKELETON ARGUMENT

FORBES HARE

Palm Grove House
PO Box 4649
Road Town
Tortola
BVI

Legal Practitioners for the Applicants

EXHIBIT R

Orders of BVI Commercial Court Granting
Permission to Serve out of the Jurisdiction
dated 12 April 2010 and 13 May 2010, entered
14 April 2010 and 14 May 2010

The Eastern Caribbean Supreme Court
In the High Court of Justice
Virgin Islands
Commercial Division
Claim No: BVIHC (COM) 357/2009



Between

Fairfield Sentry Limited (in liquidation)

Claimant/Applicant

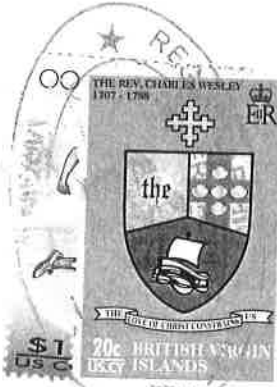
and

Alfredo Migani

Defendant/Respondent

and Others (see Schedule of Defendants)

Second – Twenty Third Defendants/Respondents



ORDER

BEFORE: The Honourable Justice Edward Bannister Q.C.

DATED: The 12th day of April 2010

ENTERED: The 14th day of April 2010

UPON the Applicant's Application dated 6 April 2010

AND UPON reading the First Affidavit of Jose Santos Torres and the Exhibit thereto

AND UPON HEARING Michael Gadd of counsel and Daniel Waldek of Forbes Hare for the Applicants

IT IS HEREBY ORDERED THAT:

- (i) the Applicant be permitted to serve the claim form and statement of claim in respect of Claim No. BVIHC(Com) 357/2009 on the Defendants out of the jurisdiction in accordance with the Hague Convention unless in any particular jurisdiction lawful alternative methods of service are available;
- (ii) service in accordance with (i) above shall be effected not later than 12 October 2010 (unless the time for service is extended by further order);

- (iii) the time within which a Defendant may:
 - (a) file an acknowledgement of service is 35 days after the claim form is served on that Defendant
 - (b) file a Defence is 56 days after the claim form is served on that Defendant;
- (iv) a copy of this order shall be served together with the other documents required to be served; and
- (v) costs reserved

BY THE COURT



REGISTRAR



**The Eastern Caribbean Supreme Court
In the High Court of Justice
Virgin Islands
Commercial Division
Claim No: BVIHC (COM) 357/2009**

Between

**Fairfield Sentry Limited (in liquidation)
Claimant/Applicant
and**

**Alfredo Migani
Defendant/Respondent
and Others (see Schedule of Defendants)**

**Second – Twenty Third
Defendants/Respondents**

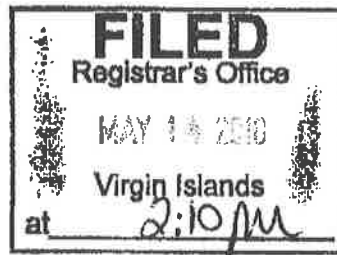
ORDER

FORBES HARE

**Palm Grove House
P.O. Box 4649
Road Town
Tortola
British Virgin Islands**

Legal Representatives for the Applicant

The Eastern Caribbean Supreme Court
In the High Court of Justice
Virgin Islands
Commercial Division
Claim No: BVIHCV (COM) 405/2009



Between

Fairfield Sentry Limited (in liquidation)

Claimant/Applicant

and

Banco General SA/Banca Privada

Defendant/Respondent

and Others

Second – Thirty First Defendants/Respondents



ORDER

BEFORE: The Honourable Justice Edward Bannister Q.C.

DATED: The 13th day of May 2010

ENTERED: The 14th day of May 2010

UPON the Applicant's Application dated 23 April 2010

AND UPON reading the First Affidavit of Jose Santos Torres, dated 23 April 2010, and the Exhibit thereto

AND UPON HEARING Daniel Waldek for the Applicant

IT IS HEREBY ORDERED THAT:

- 1) the Applicant be permitted to serve the claim form and statement of claim in respect of Claim No. BVIHC(Com) 405/2009 on the Defendants out of the jurisdiction in accordance with the Hague Convention unless in any particular jurisdiction lawful alternative methods of service are available;

- 2) The time within which a Defendant may:
- a. file an acknowledgement of service is 35 days after the claim form is served on that Defendant; and
 - b. file a Defence is 56 days after the claim form is served on that Defendant;
- 3) A copy of this order shall be served together with the other documents required to be served; and
- 4) The costs of this application be costs in the liquidation of Fairfield Sentry Limited.

BY THE COURT

A handwritten signature in black ink, appearing to read 'J. Lane', is written over a horizontal line.

REGISTRAR

**The Eastern Caribbean Supreme Court
In the High Court of Justice
Virgin Islands
Commercial Division
Claim No: BVIHCV (COM) 405/2009**

Between

**Fairfield Sentry Limited (in liquidation)
Claimant/Applicant
and**

**Banco General SA/Banca Privada
Defendant/Respondent
and Others**

**Second – Thirty First
Defendants/Respondents**

ORDER

Forbes Hare

**Palm Grove House
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Tortola**

**Tel: +1 (284) 494 1896
Fax: +1 (284) 494 1316**

Legal Practitioners for the Applicants

The Eastern Caribbean Supreme Court
In the High Court of Justice
Virgin Islands
Commercial Division
Claim No: BVIHCV (COM) 425/2009



Between

Fairfield Sentry Limited (in liquidation)

Claimant/Applicant

and

Bank Julius Baer & Co Ltd

Defendant/Respondent

and Others

Second – Twenty Seventh Defendants/Respondents



ORDER

BEFORE: The Honourable Justice Edward Bannister Q.C.

DATED: The 13th day of May 2010

ENTERED: The 14th day of May 2010

UPON the Applicant's Application dated 23 April 2010.

AND UPON reading the First Affidavit of Jose Santos Torres, dated 23 April 2010, and the Exhibit thereto.

AND UPON HEARING Daniel Waldek for the Applicant.

IT IS HEREBY ORDERED THAT:

- 1) the Applicant be permitted to serve the claim form and statement of claim in respect of Claim No. BVIHC(Com) 425/2009 on the Defendants out of the jurisdiction in accordance with the Hague Convention unless in any particular jurisdiction lawful alternative methods of service are available;

- 2) The time within which a Defendant may:
 - a. file an acknowledgement of service is 35 days after the claim form is served on that Defendant; and
 - b. file a Defence is 56 days after the claim form is served on that Defendant;
- 3) A copy of this order shall be served together with the other documents required to be served; and
- 4) The costs of this application be costs in the liquidation of Fairfield Sentry Limited.

BY THE COURT

A handwritten signature in black ink, appearing to read "P. Payne", is written over a horizontal line.

REGISTRAR

**The Eastern Caribbean Supreme Court
In the High Court of Justice
Virgin Islands
Commercial Division
Claim No: BVIHCV (COM) 425/2009**

Between

**Fairfield Sentry Limited (in liquidation)
Claimant/Applicant
and**

**Bank Julius Baer & Co Ltd
Defendant/Respondent
and Others**

**Second – Twenty Seventh
Defendants/Respondents**

ORDER

Forbes Hare

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Legal Practitioners for the Applicants



The Eastern Caribbean Supreme Court
In the High Court of Justice
Virgin Islands
Commercial Division
Claim No: BVIECV (COM) 005/2010

Between

Fairfield Sentry Limited (in liquidation)

Claimant/Applicant

and



Bank Julius Baer & Co Ltd

Defendant/Respondent

and Others

Second – Twenty Seventh Defendants/Respondents

ORDER

BEFORE: The Honourable Justice Edward Bannister Q.C.

DATED: The 13th day of May 2010

ENTERED: The 14th day of May 2010

UPON the Applicant's Application dated 23 April 2010 coming on for hearing

AND UPON reading the First Affidavit of Jose Santos Torres, dated 23 April 2010, and the Exhibit thereto

AND UPON HEARING Daniel Waldek for the Applicant

IT IS HEREBY ORDERED THAT:

- 1) the Applicant be permitted to serve the claim form and statement of claim in respect of Claim No. BVIECV (Com) 005/2010 on the Defendants out of the jurisdiction in accordance with the Hague Convention unless in any particular jurisdiction lawful alternative methods of service are available;

Delta National Bank and Trust Company
Twenty Third Defendant

F/S Fortis Banque Luxembourg
Twenty Fourth Defendant

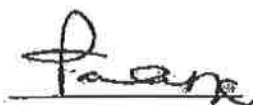
Bankmed (Suisse) SA
Twenty Fifth Defendant

Volhoms Limited
Twenty Sixth Defendant

Fox Haran & Camerini LLP
Twenty Seventh Defendant

- 2) The time within which a Defendant may:
 - a. file an acknowledgement of service is 35 days after the claim form is served on that Defendant; and
 - b. file a Defence is 56 days after the claim form is served on that Defendant;
- 3) A copy of this order shall be served together with the other documents required to be served; and
- 4) The costs of this application be costs in the liquidation of Fairfield Sentry Limited.

BY THE COURT



REGISTRAR

**The Eastern Caribbean Supreme Court
In the High Court of Justice
Virgin Islands
Commercial Division
Claim No: BV18CV (COM) 005/2010**

Between

**Fairfield Sentry Limited (in liquidation)
Claimant/Applicant
and
Bank Julius Baer & Co Ltd
Defendant/Respondent**

and Others

**Second – Twenty Seventh
Defendants/Respondents**

ORDER

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Legal Practitioners for the Applicants



The Eastern Caribbean Supreme Court
In the High Court of Justice
Virgin Islands
Commercial Division
Claim No: BVIHCV (COM) 30/2010

Between

Fairfield Sentry Limited (In liquidation)

Claimant/Applicant

and

Bank Julius Baer & Co Ltd

Defendant/Respondent

and Others

Second – Thirty Fourth Defendants/Respondents



ORDER

BEFORE: The Honourable Justice Edward Bannister Q.C.

DATED: The 13th day of May 2010

ENTERED: The 14th day of May 2010

UPON the Applicant's Application dated 23 April 2010.

AND UPON reading the First Affidavit of Jose Santos Torres, dated 23 April 2010, and the Exhibit thereto.

AND UPON HEARING Daniel Waldeck for the Applicant.

IT IS HEREBY ORDERED THAT:

- 1) the Applicant be permitted to serve the claim form and statement of claim in respect of Claim No. BVIHC(Com) 30/2010 on the Defendants out of the jurisdiction in accordance with the Hague Convention unless in any particular jurisdiction lawful alternative methods of service are available;

2) The time within which a Defendant may:

- a. file an acknowledgement of service is 35 days after the claim form is served on that Defendant; and
- b. file a Defence is 56 days after the claim form is served on that Defendant;

3) A copy of this order shall be served together with the other documents required to be served; and

4) The costs of this application be costs in the liquidation of Fairfield Sentry Limited.

BY THE COURT

A handwritten signature in dark ink, appearing to read 'P. A. H.', is written over a horizontal line.

REGISTRAR

**The Eastern Caribbean Supreme Court
In the High Court of Justice
Virgin Islands
Commercial Division
Claim No: BVIHCV (COM) 30/2010**

Between

**Fairfield Sentry Limited (in liquidation)
Claimant/Applicant
and**

**Bank Julius Baer
& Co Ltd. Defendant/Respondent**

and Others

**Second – Thirty Fourth
Defendants/Respondents**

ORDER

Forbes Hare

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Fax: +1 (284) 494 1316**

Legal Practitioners for the Applicants